

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROBERT TROHA and FREDERICK BIGNALL,	)	
on behalf of themselves and all others	)	
similarly situated,	)	
	)	
Plaintiffs,	)	Electronically Filed 08/25/05
	)	
v.	)	Civil Action No. 05-191 E
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

ANSWER

Pursuant to Fed. R. Civ. P. 7(a), 8(b) and 12, Defendant, the United States of America, answers the allegations in the numbered paragraphs of Plaintiffs' Class Action Complaint ("Complaint") as follows:

1. Defendant admits that 28 U.S.C. § 1346(a)(2) confers jurisdiction on this Court to hear claims against the United States, not exceeding \$10,000 in amount, founded upon the Constitution.

2. Defendant lacks knowledge or information sufficient to form a belief as to truth of the allegations in paragraph 2 and, on that basis, denies those allegations. However, based on the factual allegations contained in the Complaint, venue appears to be proper under 28 U.S.C. § 1402(a)(1) or under 28 U.S.C. § 1403.

3. Defendant lacks knowledge or information sufficient to form a belief as to truth of the allegations in paragraph 3 and, on that basis, denies those allegations.

4. Defendant lacks knowledge or information sufficient to form a belief as to truth of the allegations in paragraph 4 and, on that basis, denies those allegations.

5. Defendant admits the allegations in paragraph 5.

6. Defendant lacks knowledge or information sufficient to form a belief as to truth of the allegations in paragraph 6 and, on that basis, denies those allegations.

7. Defendant admits that the Philadelphia and Erie Railroad Company became part of the Pennsylvania Railroad Company in the early 1900's, but denies that this merger occurred in 1903. Defendant admits the allegations in the second sentence of paragraph 7.

8. Defendant admits the allegations in paragraph 8.

9. Defendant admits the allegations in paragraph 9.

10. Defendant admits the allegations in paragraph 10.

11. Defendant denies the allegations in paragraph 11.

12. Defendant admits the allegations in paragraph 12.

13. Defendant admits the allegations in paragraph 13.

14. Defendant admits the allegations in paragraph 14.

15. The allegations contained in paragraph 15 constitute conclusions of law, to which no response is required. To the extent that paragraph 15 includes allegations of fact, those allegations are denied.

16. The allegations in paragraph 16 constitute conclusions of law, to which no response is required. To the extent that paragraph 16 includes allegations of fact, those allegations are denied.

17. The allegations in paragraph 17 constitute conclusions of law, to which no response is required. To the extent that paragraph 17 includes allegations of fact, those allegations are denied.

18. The allegations in paragraph 18 are a characterization of Plaintiffs' case, to which no response is required. To the extent that paragraph 18 incorporates factual allegations set forth in paragraphs 1 through 17, Defendant incorporates by reference its answers to those paragraphs.

19. The allegations in paragraph 19 constitute conclusions of law, to which no response is required. To the extent that paragraph 19 includes allegations of fact, those allegations are denied.

20. The allegations in paragraph 20 and its subparagraphs constitute conclusions of law, to which no response is required. To the extent that paragraph 20 and its subparagraphs includes allegations of fact, those allegations are denied.

21. The allegations in paragraph 21 and its subparagraphs constitute conclusions of law, to which no response is required. To the extent that paragraph 21 and its subparagraphs includes allegations of fact, those allegations are denied.

22. The allegations in paragraph 22 and its subparagraphs constitute conclusions of law, to which no response is required. To the extent that paragraph 22 and its subparagraphs includes allegations of fact, those allegations are denied.

23. The allegations in paragraph 23 constitute conclusions of law, to which no response is required. To the extent that paragraph 23 includes allegations of fact, those allegations are denied.

24. The allegations in paragraph 24 are admitted.

The remaining allegations constitute Plaintiffs' prayer for relief, to which no response is required. However, as noted in Defendant's answer to paragraph 1, 28 U.S.C. §1346(a)(2) imposes a jurisdictional limit of \$10,000 per claim. To the extent that the named Plaintiffs or proposed class members are joint or multiple owners of a single property interest and seek to assert separate claims that in the aggregate exceed \$10,000, either dismissal for lack of jurisdiction or transfer to the United States Court of Federal Claims is required.

All of the allegations in Plaintiffs' Complaint which have not been specifically admitted, denied or otherwise answered are hereby denied.

#### DEFENDANT'S AFFIRMATIVE DEFENSES

##### First Affirmative Defense

Those Plaintiffs who did not own an interest in the property allegedly taken on the date that the Surface Transportation Board issued its Decision and Notice of Interim Trail Use (NITU) lack standing to seek just compensation under the Fifth Amendment.

##### Second Affirmative Defense

To the extent that Plaintiffs are joint or multiple owners of a single parcel of property and seek to assert separate claims that in the aggregate exceed \$10,000, this Court lacks jurisdiction over Plaintiffs' claims under 28 U.S.C. § 1346(a)(2), and Plaintiffs' claims must either be dismissed for lack of jurisdiction or transferred to the United States Court of Federal Claims.

WHEREFORE, the United States of America denies that the Plaintiffs are entitled to the relief prayed for, or any relief whatsoever, and requests that this action be dismissed with prejudice, that judgment be entered for Defendant, and that Defendant be allowed its costs and such other further relief as the Court may allow.

Dated: August 25, 2005

Respectfully submitted,

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Acting Assistant Attorney General  
Environment & Natural Resources Division

s/Kristine S. Tardiff

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Answer** has been served by U.S. Mail, postage prepaid, and by electronic mail on this 25<sup>th</sup> day of August, 2005, to the following counsel of record for the Plaintiffs:

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s/Kristine S. Tardiff  
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